

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff.

V.

OMAR ALARCON FUENTES,

Defendant.

NO. 2:13-CR-0125-TOR-2

ORDER DENYING DEFENDANT'S
MOTION TO REDUCE SENTENCE

BEFORE THE COURT are Defendant's Request for Compassionate

Release Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) and Motion to Take Judicial

14 | Notice. ECF Nos. 283 and 285. The Government has submitted its opposition.

15 | ECF No. 286. The Court has reviewed the record and files herein, the completed

16 briefing, and is fully informed.

16 | briefing, and is fully informed.

BACKGROUND

18 Defendant is serving sentences in two separate cases, this one and case

19 number 14-CR-2071-TOR. On December 3, 2014, Omar Alarcon Fuentes was

20 | found guilty by jury verdict of Distribution of 50 Grams or More of Actual

1 Methamphetamine in violation of 21 U.S.C. § 841(a)(1) as charged in the
2 Indictment filed on August 13, 2013. ECF Nos. 16, 179. Additionally, on March
3 19, 2015 in case number 14-CR-2071-TOR, Defendant pleaded guilty to the
4 Indictment filed on September 17, 2014, ECF No. 1, charging him with being an
5 Alien in Possession of Ammunition in violation of 18 U.S.C. §§ 922(g)(5)(A) and
6 924(a)(2).

7 On July 2, 2015, this Court sentenced Defendant to, inter alia, a 121-month
8 term of imprisonment, followed by a 5-year term of supervised release in the drug
9 case. ECF No. 208. At the same time, this Court sentenced Defendant to, inter
10 alia, a 120-month term of imprisonment, followed by a 3-year term of supervised
11 release in the possession of ammunition case, concurrent with the drug sentence.
12 Case number 14-CR-2071-TOR, ECF No. 46. Defendant was remanded to the
13 custody of the U.S. Marshal for service of his sentences.

14 Defendant is currently incarcerated at North Lake Correctional Facility
15 (NLCF), a privately contracted prison in Baldwin, Michigan. Defendant's
16 projected release date is February 27, 2022. The Immigration and Customs
17 Enforcement has lodged a detainer with the Bureau of Prisons, in order to
18 effectuate a deportation proceeding against Defendant.

19 On August 23, 2020, Defendant submitted to the Facility Administrator an
20 administrative request for compassionate release based on "the Covid-19 outbreak

1 due to its highly infectious rate among Hispanics or in places with large clusters of
2 people confine[d] to a small area.” ECF No. 286-2. On September 15, 2020,
3 Defendant’s administrative request was denied. ECF No. 283 at 5-6.

4 On October 28, 2020, Defendant filed the instant motion seeking
5 compassionate release. ECF No. 283. Defendant seeks to have his sentence
6 modified to time served and be immediately deported to his home country of
7 Mexico. *Id.* at 3. He explains that his ethnicity puts him at a substantial risk of
8 infection, the medical services at NLCF are deficient, he had a recent bout with
9 tuberculosis, he obtained a G.E.D., his behavior and disciplinary history have been
10 good and he is a low recidivism risk. *Id.* On November 3, 2020, Defendant filed a
11 Motion to Take Judicial Notice, ECF No. 285, concerning a news article.

12 DISCUSSION

13 A. Eligibility for Compassionate Release

14 Federal courts have the statutory authority to modify an imposed term of
15 imprisonment for two reasons: compassionate release under 18 U.S.C. § 3582(c)(1)
16 or based on a change in the sentencing guidelines under 18 U.S.C. § 3582(c)(2).
17 Until recently, motions for compassionate release could only be brought to the
18 Court by the Director of the Bureau of Prisons. 18 U.S.C. § 3582(c)(1)(A) (2002).
19 However, after the December 2018 passage of the First Step Act, defendants may
20 now bring their own motions for compassionate release after exhausting

1 administrative remedies within the Bureau of Prisons or by waiting 30 days after
2 receipt of their request by the warden of defendant's facility, whichever is earlier.
3 18 U.S.C. § 3582(c)(1)(A) (2018).

4 A defendant may be eligible for compassionate release: (1) if the Court finds
5 "extraordinary or compelling reasons" to warrant a sentence reduction; or (2) if the
6 defendant is at least 70 years old, has served at least 30 years in prison pursuant to
7 a sentence imposed for the offense for which the defendant is currently imprisoned,
8 and the defendant is determined not to pose a risk of danger to the community. 18
9 U.S.C. § 3582(c)(1)(A). Under either eligibility prong, the Court must also find
10 that a sentence reduction is "consistent with applicable policy statements issued by
11 the [United States] Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A). The
12 Sentencing Guidelines instruct that the Court should consider the sentencing
13 factors set forth in 18 U.S.C. § 3553 when deciding a motion for compassionate
14 release, and that the Court should not grant a sentence reduction if the defendant
15 poses a risk of danger to the community, as defined in the Bail Reform Act.

16 U.S.S.G. § 1B1.13.

17 The Sentencing Commission's policy statement on sentence reduction
18 mirrors the language of the compassionate release statute, but it has not yet been
19 updated to reflect the procedural changes implemented by the First Step Act.
20 U.S.S.G. § 1B1.13. "While that particular policy statement has not yet been

1 updated to reflect that defendants (and not just the [Bureau of Prisons (“BOP”)])
2 may move for compassionate release, courts have universally turned to U.S.S.G.
3 § 1B1.13 to provide guidance on the ‘extraordinary and compelling reasons’ that
4 may warrant a sentence reduction.” *United States v. McGraw*, No. 2:02-cr-00018-
5 LJM-CMM, 2019 WL 2059488, at *2 (S.D. Ind. May 9, 2019) (gathering cases).
6 The sentence reduction policy statement outlines four categories of circumstances
7 that may constitute “extraordinary and compelling reasons” for a sentence
8 reduction: (1) the defendant suffers from a medical condition that is terminal or
9 substantially diminishes the defendant’s ability to provide self-care in a
10 correctional environment; (2) the defendant is at least 65 years old, is experiencing
11 a serious deterioration in health due to the aging process, and has served at least 10
12 years or 75% of his or her term of imprisonment; (3) family circumstances
13 involving the death or incapacitation of the caregiver of the defendant’s minor
14 child or the incapacitation of the defendant’s spouse or registered partner; or (4)
15 other reasons, other than or in combination with the other listed circumstances, that
16 are extraordinary and compelling. U.S.S.G. § 1B1.13, Application Note 1. Here,
17 Defendant’s motion will be analyzed under the catch-all provision, “other reasons”
18 that are “extraordinary and compelling.”

1 **B. Exhaustion or Lapse of 30 days**

2 The Facility Administrator of NLCF denied Defendant's compassionate
3 release request on September 15, 2020. ECF No. 283 at 5-6. The Government
4 concedes Defendant has exhausted his administrative remedies. *See* ECF No. 286
5 at 6. Accordingly, the Court finds Defendant has exhausted his administrative
6 remedies.

7 **C. Extraordinary and Compelling Reasons**

8 Defendant, now age 43, contends that his ethnicity puts him at a substantial
9 risk of infection, the medical services at NLCF are deficient, he had a recent bout
10 with tuberculosis, he obtained a G.E.D., his behavior and disciplinary history have
11 been good and he is a low recidivism risk.

12 Defendant's Hispanic origin does not constitute an extraordinary and
13 compelling reason to warrant release. While certain ethnicities may face a higher
14 risk of severe illness from COVID-19, that fact alone does not warrant release
15 from prison.

16 The Government has submitted Defendant's medical records. ECF No. 287
17 (under seal). The medical records do not reveal any medical condition that would
18 warrant release. While the records document Defendant's latent TB condition,
19 they also show that Defendant's latent TB is not active and has been successfully
20 treated. Defendant's health continues to be monitored.

1 Defendant complains about deficient medical services but offers no evidence
2 or proof that the Bureau of Prisons or NLCF are incapable of providing adequate
3 care.

4 Whether Defendant is housed in prison or released and deported to Mexico,
5 the virus continues to spread throughout the world. Just because Defendant fears
6 an infection does not warrant immediate release. In this case, there are no
7 extraordinary and compelling reasons for a reduction in sentence.

8 **D. Factors under 18 U.S.C. § 3553(a)**

9 18 U.S.C. § 3582(c) and the Sentencing Guidelines instruct that the Court
10 should consider the sentencing factors set forth in 18 U.S.C. § 3553(a) when
11 deciding a motion for compassionate release.

12 At the time of the original sentencing, the Court fully considered those
13 factors and imposed sentences that were sufficient but not greater than necessary to
14 comply with and fulfill the goals of sentencing. Once again, the Court has fully
15 considered these factors in light of the developments since sentencing. Of
16 particular note is that the criminal conduct here was quite serious involving the
17 distribution of methamphetamine. Additionally, Defendant was convicted of being
18 an alien in possession of ammunition, another serious threat to the health and
19 safety of the community.

1 The sentences the Court imposed were “sufficient, but not greater than
2 necessary,” to comply with the purposes of § 3553(a), including to reflect the
3 seriousness of the offenses, to promote respect for the law, to provide just
4 punishment for the offenses and to afford adequate deterrence (general and
5 specific) to this criminal conduct. The sentences imposed remain sufficient but not
6 greater than necessary to comply with the purposes of sentencing.

7 **E. Danger to any Person and the Community under 18 U.S.C. § 3142(g)**

8 Defendant contends that he is a low risk for recidivism. ECF No. 283 at 3.
9 While Defendant’s underlying crimes are not categorized as a violent crimes, one
10 is a serious drug trafficking offense that carries with it a rebuttable presumption of
11 detention and demonstrates the risk he presents to the health and safety of the
12 community. The other involves ammunition possessed by a prohibited person and
13 presents a risk of harm to the community. While Defendant expects to be deported
14 to Mexico, nothing previously has prevented Defendant from returning to the
15 United States to commit these crimes.

16 Defendant’s good conduct and successful rehabilitative activities—obtaining
17 a G.E.D., his behavior and disciplinary history have been good, completion of
18 courses for logistic management, business management and work as a law clerk—
19 are all commendable, but do not warrant early release.

CONCLUSION

Defendant has no health condition and presents no extraordinary or compelling reason to modify the Judgments that have been imposed. The Court declines to exercise its discretion to reduce Defendant's sentences because extraordinary and compelling reasons do not warrant such a reduction.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Defendant's Request for Compassionate Release Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), ECF No. 283, is **DENIED**.
2. Defendant's Motion to Take Judicial Notice, ECF No. 285, is **DENIED** as moot.

The District Court Executive is directed to enter this Order and furnish copies to the parties.

DATED January 5, 2021.



THOMAS O. RICE
United States District Judge